

In The Matter Of:
UNITED STATES OF AMERICA v.
MUSTAFA KAMEL MUSTAFA

April 18, 2014

Southern District Court Reporters

Original File E4ILMUSF.txt

Min-U-Script® with Word Index

<p>E4i0mus1 Page 361</p> <p>1 have just decided to move on, all right. 2 I also would like you to know now that we're into 3 testimony, and we have had most of the day now of testimony, to 4 give you, a couple of reminders. 5 You have started, now, to hear testimony from the 6 witnesses in this case on both direct and then 7 cross-examination. And so I want to go back to some of my 8 introductory instructions that I gave you. 9 I want to remind you that questions from a lawyer are 10 not evidence. You will hear a lot of questions, but those are 11 not evidence. And you should not take any assertions of fact 12 that may be embedded in the questions as evidence; that is, you 13 can't accept what a lawyer says is true. What's true is the -- 14 or what is evidence. It is for you to determine how much of it 15 you believe, or don't believe. But what is evidence are the 16 answers to questions. So the lawyer's questions are not 17 evidence, the witness' answers are evidence, all right. And it 18 will be for you, ultimately, to decide issues as to how much 19 you choose to accept, or not accept, of a particular witness' 20 testimony. 21 I also want to remind you that evidence comes in in 22 pieces. That means that listening to testimony at a trial is 23 not like reading a book. A book might tell you a story from 24 the beginning to the end, with each chapter telling one whole 25 piece of a story. But a trial is very different. Stories come</p>	<p>E4i0mus1 Page 363</p> <p>1 is able to capture your voice. And speak nice and clearly and 2 slowly. 3 So if you to have push yourself up in the chair, go 4 ahead and do that. 5 Mr. Cronan, you may proceed, sir. 6 MR. CRONAN: Thank you, your Honor. 7 DIRECT EXAMINATION 8 BY MR. CRONAN: 9 Q. Where were you born, sir? 10 A. Seattle, Washington. 11 Q. Were you raised in Seattle, as well? 12 A. Yes, sir. 13 Q. Are you employed now? 14 A. Yes, I am. 15 Q. And, generally, what type of business industry are you in? 16 A. Food catering. 17 Q. Now, I'm going to ask you to -- and if necessary, feel free 18 to stand up, with the Court's permission -- to look around the 19 courtroom and tell us if you recognize anyone in this 20 courtroom. 21 A. Yes, I do. 22 Q. Who do you recognize? 23 A. The man in the far back. 24 Q. Can you describe that individual with respect to what he is 25 wearing?</p>
<p>E4i0mus1 Page 362</p> <p>1 in a little here, a little there, sometimes out of 2 chronological order. It is in pieces. And you have to sort of 3 listen to a bunch of different pieces to put the story 4 together. That is why we keep saying, keep an open mind, the 5 evidence comes in in pieces. 6 And, finally, I want to remind you, to always bear in 7 mind that the defendant is presumed innocent, and he can't be 8 found guilty unless the government is able to prove his guilt 9 beyond a reasonable doubt. 10 All right. So we're going to now go on to the next 11 witness. 12 Mr. Cronan, would the government like to call its next 13 witness? 14 MR. CRONAN: Yes, your Honor, the government calls 15 David Smith. 16 THE COURT: All right. Mr. Smith, please. 17 Right up here, Mr. Smith. 18 THE DEPUTY CLERK: Please raise your right hand. 19 DAVID SMITH, 20 called as a witness by the government, 21 having been duly sworn, testified as follows. 22 THE DEPUTY CLERK: State your name for the record. 23 THE WITNESS: David Smith. 24 THE COURT: Please be seated, sir. There is water to 25 your left, and you'll want to adjust the mic so it, you know,</p>	<p>E4i0mus1 Smith - direct Page 364</p> <p>1 A. Gray shirt, white hair. 2 Q. What about facial features or anything like that, do you -- 3 A. Full beard, glasses. 4 MR. CRONAN: May the record reflect the witness 5 identified the defendant. 6 THE COURT: So reflected. 7 BY MR. CRONAN: 8 Q. Do you know that individual's name? 9 A. Yes, I do. 10 Q. What do you know his name to be? 11 A. Abu Hamza. 12 Q. Have you previously met Abu Hamza? 13 A. Yes, I have. 14 Q. And we'll get into some more detail shortly, but can you 15 tell us how you met Abu Hamza? 16 A. I met him on a trip that I took. 17 Q. And a trip, to where, sir? 18 A. London. 19 Q. And on that trip, did you have the opportunity to sit down 20 and speak with the defendant? 21 A. Yes, I did. 22 Q. And I would ask if we put in front of, only the witness, 23 what would have been marked for identification as exhibit 701. 24 Do you recognize the individual depicted in that 25 photograph?</p>

<p>E4i0mus3 Smith - direct Page 425</p> <p>1 Q. Before Haroom left Seattle, do you recall any conversations 2 you had with him about whether he was satisfied with his trip 3 to Seattle? 4 A. I do. 5 Q. What was that conversation? 6 A. We were speaking to him in Dar Us Salaam mosque. And he 7 sounded very discontent of his purpose of being there. And he 8 was displeased with the Abu Hamza's decision to send him there. 9 And he compared his faith to that of a candle that is lit, and 10 his faith being the fire, and the longer it burns, the less the 11 candle becomes until it fizzles out. And he was very, very. 12 unhappy. He said he wanted to -- he came here to do something. 13 He has been following the Sheikh for a long time and he came to 14 do something, and nothing was going on. 15 Q. Did you testify before a federal grand jury back in 16 September 2002? 17 A. I did. 18 Q. And was would that grand jury located? 19 A. Seattle, Washington. 20 Q. Can you explain your understanding of what a grand jury is? 21 A. My understanding of a grand jury is a body of jurors that 22 decides if a crime was perpetuated in a certain time and place. 23 Q. Fair to say that your understanding is that grand jury 24 investigates criminal activity? 25 A. Yes.</p>	<p>E4i0mus3 Smith - direct Page 427</p> <p>1 Q. What did you understand immunity to mean? 2 A. I wouldn't be charged for information that I divulged to -- 3 Q. To the grand jury? 4 A. Yes, to the grand jury. 5 Q. Now, have you recently reviewed your testimony before that 6 grand jury? 7 A. Yes, I did. 8 Q. Looking back today at the testimony you gave at that grand 9 jury, was there additional information that you had about the 10 investigation that you did not give the grand jury? 11 A. Yes. 12 Q. What type of additional information did you have that you 13 did not provide? 14 A. Some of the players or members that went down to the 15 mosque -- or, excuse me, the Bly, Oregon. Pardon me. 16 Q. So you didn't give full details about those individuals? 17 A. Did not give full details, yeah. 18 Q. Did you tell the grand jury about Abu Hamza? 19 A. Yes, I did. 20 Q. Were you thorough when you spoke about Abu Hamza? 21 A. I was not thorough. 22 Q. Why were you not thorough? 23 A. I was very young. Very, very scared. And at the time, I 24 was -- I believed that God was going to punish me and curse me 25 for being -- giving out too much information.</p>
<p>E4i0mus3 Smith - direct Page 426</p> <p>1 Q. Did you have an understanding of what the grand jury you 2 testified before in September, that you testified for back in 3 September 2001, was investigating? 4 A. I'm sorry, could you repeat that, please. 5 Q. Sure. Did you have an understanding of what the grand 6 jury, that you testified before, was investigating? 7 A. Yes. 8 Q. What did you understand it to be investigating? 9 A. Bly, Oregon. 10 Q. What do you mean by Bly, Oregon. 11 A. The activities that were being -- the activities that were 12 being done in Bly, Oregon. 13 Q. And what activities, in particular? 14 A. What we were doing there. 15 Q. And you testified before this grand jury in September 2002? 16 A. I did. 17 Q. How old were you at the time? 18 A. Twenty-one, 22. 19 Q. Were you still a practicing Muslim in Seattle at the time? 20 A. At the time, yes. 21 Q. And before you testified, were you put under oath? 22 A. I was. 23 Q. Did you receive immunity before you testified before that 24 grand jury? 25 A. I did.</p>	<p>E4i0mus3 Smith - direct Page 428</p> <p>1 Q. Now, in recent years, have you received any payment from 2 the United States government? 3 A. Yes, I have. 4 Q. Generally speaking, why have you been paid by the 5 government, generally, what sort of -- what had been the 6 general basis of the payments you received from the government? 7 A. For information. 8 Q. So would it be fair to say you have been paid for services 9 and information you provided? 10 A. Yes. 11 Q. Did you receive these payments in connection with anything 12 you did relating to this case? Or were the payments for 13 separate investigations unrelated to this case. 14 A. Separate. 15 Q. When were you first paid? 16 A. 2011. 17 Q. And have you been paid, on or off, by the U.S. government, 18 since 2011? 19 A. Yes, I have. 20 Q. And approximately, in total, how much have you been paid 21 for services and information since 2011? 22 A. About 26,000. 23 Q. And have you also been paid for expenses that you have 24 incurred when providing these services? 25 A. Yes.</p>

<p>E4i0mus3 Smith - direct Page 429</p> <p>1 Q. And has that also been since 2011?</p> <p>2 A. Yes.</p> <p>3 Q. Have you received any other benefits from the government</p> <p>4 for the services you provided?</p> <p>5 A. I have.</p> <p>6 Q. And what benefit?</p> <p>7 A. Housing.</p> <p>8 Q. What housing benefit did you receive?</p> <p>9 A. Public housing.</p> <p>10 Q. Do you understand that you were financially eligible for</p> <p>11 that public housing?</p> <p>12 A. Yes, I do.</p> <p>13 Q. If you were eligible for that housing, then what benefit</p> <p>14 did you receive?</p> <p>15 A. They helped to move my name up on the roster.</p> <p>16 Q. So they moved you to the top of the pile?</p> <p>17 A. They did.</p> <p>18 Q. Do you still live in that housing?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And other than your normal -- other than your travel</p> <p>21 expenses and normal witness fees, do you expect to be paid by</p> <p>22 the government for today?</p> <p>23 A. No, I don't.</p> <p>24 Q. Now, sir, you mentioned that you last saw Haroom at Abdul</p> <p>25 Raheem's apartment; is that right?</p>	<p>E4i0mus3 Stipulation Page 431</p> <p>1 MR. CRONAN: And, your Honor, this one may be helpful</p> <p>2 before the jury on their screens, so I would ask that exhibit 4</p> <p>3 be admitted into evidence.</p> <p>4 THE COURT: All right, any objection?</p> <p>5 MR. SCHNEIDER: No.</p> <p>6 THE COURT: Received. You may proceed.</p> <p>7 (Government's Exhibit 4 received in evidence)</p> <p>8 MR. CRONAN: If we could publish exhibit 4, please.</p> <p>9 THE COURT: Yes.</p> <p>10 MR. CRONAN: The parties would stipulate to, that in</p> <p>11 September 2000, Special Agent from the FBI, in conjunction with</p> <p>12 Pakistani authorities, conducted a search of a house connected</p> <p>13 to al Qaeda on Turiq Road, in Karachi, Pakistan, hereinafter</p> <p>14 the al Qaeda house.</p> <p>15 Government exhibits 1101 to 1110 are fair and accurate</p> <p>16 photographs of the al Qaeda house as it appeared in September</p> <p>17 of 2002.</p> <p>18 Paragraph three, during the search of the al Qaeda</p> <p>19 house, Special Agents from the FBI seized a ledger, handwritten</p> <p>20 in Arabic, from inside the al Qaeda house. The ledger</p> <p>21 retrieved in September 2002 from inside the al Qaeda house is</p> <p>22 marked as government exhibit 1111. A fair and accurate</p> <p>23 photocopy of the relevant portion of this length is marked as</p> <p>24 government exhibit 1111-A.</p> <p>25 In addition a fair and accurate handwritten</p>
<p>E4i0mus3 Smith - direct Page 430</p> <p>1 A. Yes.</p> <p>2 Q. Have you heard from Haroom since that time?</p> <p>3 A. No, I haven't.</p> <p>4 Q. Do you know where Haroom went after he left Seattle?</p> <p>5 A. No.</p> <p>6 MR. CRONAN: Your Honor, the government at this point</p> <p>7 would like to read from another stipulation, exhibit 4.</p> <p>8 THE COURT: All right, you may proceed.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>E4i0mus3 Stipulation Page 432</p> <p>1 translation of the relevant portion of this ledger is marked as</p> <p>2 government exhibit 1111-A-T.</p> <p>3 Paragraph four, the English translation of the ledger</p> <p>4 marked as government exhibit 1111-A-T shows that on line 35 of</p> <p>5 the ledger, the name Aswat Haroon Haroom appears. Next to that</p> <p>6 name, under the column marked nationality, appears the word</p> <p>7 British. In addition, on that same line under the column</p> <p>8 marked item, appears the words two British passports.</p> <p>9 Now going to paragraph five. After the FBI completed</p> <p>10 the search of the al Qaeda house, some of the items seized from</p> <p>11 the al Qaeda house were submitted for fingerprint examination.</p> <p>12 Paragraph six. Fingerprint examinations conducted by</p> <p>13 the FBI revealed that numerous items seized from the al Qaeda</p> <p>14 house contained the fingerprints of Khalid Sheikh Mohammed.</p> <p>15 From at least 1999 up to time of his capture in March 2003,</p> <p>16 Khalid Sheikh Mohammed was the chief operational planner for al</p> <p>17 Qaeda.</p> <p>18 And, your Honor, the government offers</p> <p>19 exhibits 1101-1110, 1111, 1111-A and 1111-A-T into evidence.</p> <p>20 THE COURT: Any objection?</p> <p>21 MR. SCHNEIDER: No.</p> <p>22 THE COURT: Received.</p> <p>23 (Government's Exhibits 1101-1110, 1111, 1111-A, 1111-A-T received</p> <p>24 in evidence)</p> <p>25 MR. CRONAN: First, your Honor, may we publish in</p>

<p>E4i0mus3 Smith - cross Page 445</p> <p>1 expected to give that answer; right?</p> <p>2 A. Can you rephrase that, please?</p> <p>3 Q. Sure. You were told that if you knew an answer to a</p> <p>4 question, you were supposed to give an answer to that question</p> <p>5 if you could; right?</p> <p>6 A. Yes.</p> <p>7 Q. You were supposed to give a truthful answer; right?</p> <p>8 A. Yes.</p> <p>9 Q. You were supposed to answer whatever questions were put to</p> <p>10 you; right?</p> <p>11 A. Yes.</p> <p>12 Q. If you knew; right? If you knew the answer, you are</p> <p>13 supposed to answer truthfully, right?</p> <p>14 A. Yes.</p> <p>15 Q. The fact is, in the grand jury -- because you said before</p> <p>16 you had a little bit of an understanding it is only prosecutors</p> <p>17 that were in there, right? Prosecutors, grand jurors, and you;</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. You were not cross-examined by a defense lawyer; were you?</p> <p>21 A. I was not.</p> <p>22 Q. So whatever questions were put to you in the grand jury in</p> <p>23 September of 2002, were put to you by a member of the U.S.</p> <p>24 Attorney's Office in Washington state, is that right?</p> <p>25 A. Yes.</p>	<p>E4i0mus3 Smith - cross Page 447</p> <p>1 obstruction of justice by the government, right?</p> <p>2 A. Yes.</p> <p>3 Q. You could be charged with lying to federal agents; right?</p> <p>4 A. Yes.</p> <p>5 Q. So it was incumbent upon you, when you testified in the</p> <p>6 grand jury, without getting paid, to tell the complete truth as</p> <p>7 best you knew it, right?</p> <p>8 A. Yes.</p> <p>9 Q. Now in 1999, you went to Bly Oregon; right?</p> <p>10 A. Yes, I did.</p> <p>11 Q. And when you went to Bly, Oregon, you went there, I think</p> <p>12 you said kind of like a retreat, right?</p> <p>13 A. Yes.</p> <p>14 Q. And when you went there, it was number of hours drive from</p> <p>15 Seattle to Bly, right?</p> <p>16 A. It was.</p> <p>17 Q. And you went there, it was you, and Abdul Rashid, right?</p> <p>18 A. Yes.</p> <p>19 (Continued on next page)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>E4i0mus3 Smith - cross Page 446</p> <p>1 Q. And you were there -- you were told in the grand jury that</p> <p>2 you were there as a witness, right?</p> <p>3 A. Yes.</p> <p>4 Q. You were told you are not a subject of the investigation;</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. You were told you are not a target of the investigation;</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. And you were only a witness, so we want you to give us</p> <p>11 whatever you know; right?</p> <p>12 A. Yes.</p> <p>13 Q. And they specifically told you, while you were being given</p> <p>14 immunity, you have to tell us the truth; right?</p> <p>15 A. Yes.</p> <p>16 Q. And you -- and the only way you could get in trouble is if</p> <p>17 you don't tell the truth; right?</p> <p>18 A. True.</p> <p>19 Q. The only way -- and if you don't tell the truth, you will</p> <p>20 lose your immunity, right? Right?</p> <p>21 A. Yes.</p> <p>22 Q. And you will end up -- could be charged with perjury,</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. And you could be charged with obstructing government --</p>	<p>E4iLMUS4 Smith - cross Page 448</p> <p>1 BY MR. SCHNEIDER:</p> <p>2 Q. And Abdul Raheem Arshard Ali, right, and those two</p> <p>3 gentlemen are brothers to each other, right?</p> <p>4 A. Yes, they're brothers.</p> <p>5 Q. Not just Muslim brothers, actual blood brothers?</p> <p>6 A. Blood brothers.</p> <p>7 Q. And Mustafa Ujaama, who is also there with you, correct?</p> <p>8 A. Yes, he was.</p> <p>9 Q. Now, there may have been other people there, but you don't</p> <p>10 necessarily remember who they were when they went with you,</p> <p>11 right?</p> <p>12 A. I'm sorry, could you say that again, please?</p> <p>13 Q. Were there other people there who went with you to Bly?</p> <p>14 A. There was.</p> <p>15 Q. And who else went?</p> <p>16 A. White Ali.</p> <p>17 Q. White Ali, that's a nickname because he's Caucasian?</p> <p>18 A. Well, there's a lot of Ali's, so.</p> <p>19 Q. Is that why he's referred to as white Ali because he's a</p> <p>20 Caucasian Ali?</p> <p>21 A. Yeah.</p> <p>22 Q. Not a criticism. Just want to understand why.</p> <p>23 Other than White Ali, who else was there?</p> <p>24 A. A brother named Amin.</p> <p>25 Q. A-M-I-N, Amin?</p>